

## **RIGHTS AND PROTECTIONS UNDER THE FEDERAL EEO LAWS AND THE WHISTLEBLOWER PROTECTION ACT**

This brochure is intended to provide information about the Federal Sector Employment Discrimination Complaints Process and complaints filed under the Whistleblower Protection Act of 1989. The Department of the Interior (DOI) is committed to ensuring that all employees, former employees and applicants for employment are free from unlawful discrimination, harassment and retaliation.

### **“The No Fear Act”**

On October 1, 2003, the Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002, Public Law 107-174 (hereafter the “No Fear Act”) became effective.

The No Fear Act is an anti-discrimination law that requires management accountability for correcting and preventing discrimination and retaliation. It is meant to create a public awareness of the Department's efforts to stop unlawful discrimination, harassment and retaliation by requiring the publicizing of complaints, settlements and the number of employees disciplined for having engaged in discriminatory actions and for the expeditious processing of EEO complaints. It emphasizes notification about rights and protection under laws prohibiting unlawful discrimination and reprisal, notification about rights and training for employees, former employees and applicants for employment.

If, as an employee, former employee, or an applicant for employment with the DOI, you believe that you may have been discriminated against on one or more of the following bases: race, color, religion, sex, national origin, age, physical or mental disability and/or reprisal (for prior EEO activity participation), you must contact and discuss the matter with an EEO Counselor. Agencies are required to designate EEO Counselors and to make them available to employees and applicants. The goal of the EEO Counselor is to facilitate an informal resolution of the matter between the parties when possible.

### **The Informal Counseling Process**

You must contact an EEO Counselor within 45 calendar days of the date of the incident that gave rise to your complaint or, if it is a personnel action, within 45 calendar days of its effective date. The Counselor has 30 calendar days from the time you report your issue to attempt an informal resolution of the matter. The 30-day period for EEO counseling may extend up to an additional 60 days if you agree in writing to such an extension. Instead of EEO Counseling, you may elect Alternative Dispute Resolution (ADR). ADR is a concentrated effort by a third party neutral to resolve your complaint expeditiously. If you elect to participate in ADR, the informal counseling process will be 90 days.

If, at the end of the informal counseling process (including any extension), the matter is not resolved, you will be advised, in writing, of your right to file a formal complaint as specified in the “The Formal Complaint” section below.

You have a right to be represented at any stage of the process in presenting your complaint, including the informal counseling stage. As a general rule, you may select any person to represent you, including an attorney. You and your representative, if an employee of the DOI, are entitled to a reasonable amount of official time in preparing and presenting your complaint.

### **The Role of the EEO Counselor**

The EEO Counselor will:

- § Explain the complaint process to you and advise you in writing of your rights and responsibilities.
- § Listen and help you specifically identify your claims of employment discrimination.
- § Inform you about the ADR process.
- § Conduct a limited inquiry into your claims.
- § Discuss your claims with an appropriate management official who has authority to resolve your claims.
- § Attempt to resolve your claims informally.

EEO Counselors report regularly to the EEO Officer about their activities. They will also discuss your claims with appropriate officials, but they will use your name only with your permission. You have a right to remain anonymous during the informal counseling period.

### **The Alternative Dispute Resolution Process**

Federal regulations require agencies to establish or make available an ADR program for use during the EEO process. ADR is a viable alternative to the discrimination complaint process which can be complex, lengthy, time consuming, and expensive. The EEO Counselor will offer you ADR at the beginning of the informal counseling period if your claim is covered by the DOI ADR process. You may elect to proceed in the ADR process or to remain in the informal counseling process. If you elect to enter ADR, the informal process will extend to 90 days and EEO counseling will cease. A trained mediator from either inside or outside the DOI may be assigned to mediate/facilitate resolution of your claim. Discussions held during the ADR process are confidential and will not be recorded in the complaint file. The mediator is a neutral, objective, and impartial individual who will be able to assist you and management in joint problem solving.

If your claim is resolved during the ADR process or EEO counseling, the resolution will be put in writing to be signed by you and the appropriate management official. If your claim is not resolved during counseling or ADR, the EEO Counselor will issue you the Notice of Right to File a Discrimination Complaint.

### **The Formal Complaint**

If attempts to informally resolve your complaint are unsuccessful, you will be notified by the Counselor, in writing, of your right to file a formal complaint. If you decide to file a formal complaint, you or your representative have 15 calendar days from the date of receipt of this notice to file your formal complaint. It is important to know that, if you do not file your formal complaint within the 15-day time limit, your complaint may be dismissed for untimeliness.

It is not the duty of the EEO Counselor to file your complaint for you. However, he or she can answer your questions concerning the filing of your complaint. Your written complaint must be specific and must be limited to the matters discussed with the EEO Counselor. The formal complaint must be filed by you or your representative, using DOI Form DI-1892, with the appropriate office/address identified in the Notice of Right to File. Generally, the formal complaint can be filed with the Secretary of the Interior or the Director, Office of Civil Rights (OCR), 1849 C Street, N.W., MS-5221, MIB, Washington, D.C. 20240 or the Bureau EO Officer identified on the back of this brochure. The DI-1892 form may be obtained from the EEO Counselor, an EO Officer, or the OCR website at [www.doi.gov/diversity](http://www.doi.gov/diversity).

Your formal complaint will be acknowledged and you will be notified of the claims to be accepted or dismissed. If one or more of your claims are dismissed, only the accepted claims will be investigated. The complaint file will be documented with the reasons why some claims have not been accepted for investigation. There is no immediate right to appeal the non-accepted claims at this stage. However, if there is a determination not to accept any of the claims in your complaint, the Director, OCR will issue a final agency decision explaining the dismissal of the complaint. You will be notified in the final agency decision of your right to appeal the dismissal to the Equal Employment Opportunity Commission (EEOC). Once your formal complaint is accepted, it will be investigated.

### **The Investigation**

A thorough investigation will be conducted into your complaint. The investigation will encompass the collection of all the information relevant to the accepted claims and may, where appropriate, include comparative data on other individuals who are similarly situated. The investigation may be conducted by verbatim statements, interrogatories, position papers, or by other fact finding methods. During the investigation, you will have a full opportunity to present all the facts which you believe show unlawful discrimination.

The agency has 180 calendar days from the date you filed your complaint to notify you that the investigation has been completed. By written agreement with you, the investigation time period may be extended an additional 90 days. Your complaint may also be amended with like or related claims raised before the completion of the investigation. If your complaint is amended, the time period will be extended by 180 days from the date of the amendment. After the investigation is completed, a copy of the Report of Investigation (ROI) will be sent to you. Upon receipt of the ROI, you will have 30 days to exercise your right either (1) to request a hearing before an EEOC Administrative Judge, or (2) to request a decision, without a hearing, by the Director, OCR. This notice is called the “notice of your right to an election.”

If you have a claim that is appealable to the Merit Systems Protection Board (MSPB), i.e., a mixed-case, your complaint will be investigated in 120 days. You are not entitled to a hearing by the EEOC if you have a mixed-case. A final agency decision will be issued by the Director, OCR, within 45 days and you will be given appeal rights to the MSPB.

### **The Hearing**

Your request for a hearing must be sent directly to the appropriate EEOC Field Office with a copy to the DOI. Once you have elected a hearing, the Administrative Judge will have full and complete authority over your complaint. You will be allowed to present witnesses and evidence relevant to your complaint. The hearing is recorded and transcribed verbatim. The Administrative Judge will have 180 days from the date the EEOC received your request for a hearing, to conduct the hearing and to issue a decision on your complaint. The hearing time frame may be extended by the Administrative Judge. You should be advised, however, that there may be circumstances where the Administrative Judge may decide that a hearing is not necessary. Upon receipt of the Administrative Judge’s decision on your complaint, the Director, OCR will have 40 days to issue a final order for the DOI.

### **A Decision Without a Hearing**

If you do not request either a hearing or a decision without a hearing within 30 calendar days after you receive the notice of election described above, or if your complaint is a mixed-case, the Director, OCR will issue a final agency decision based upon the evidence in the ROI. You will be given appeal rights if you are dissatisfied with the final decision.

### **The Final Decision**

The Director, OCR, as the designee of the Secretary, will issue you a final agency decision on your complaint within 60 calendar days from (a) the date of your request for an immediate decision, or (b) the end of the 30-day period after your receipt of the notice of election. In a mixed-case complaint, the Director, OCR will issue a final agency decision within 45 days from the issuance of the ROI.

The final agency decision will include an analysis on the merits of each claim accepted in your complaint, and/or a decision to dismiss some or all of your claims. If a finding of discrimination is made, the final agency decision will also identify the corrective action to which you are entitled.

If a hearing has been conducted, the Administrative Judge will send you a copy of the decision with a copy to the Director, OCR. The Director, OCR will have 40 days to issue a final order after receipt of the Administrative Judge's decision. If the Director, OCR rejects the Administrative Judge's decision, he/she must simultaneously appeal to the EEOC. A copy of the appeal will be sent to you.

If you are dissatisfied with the agency's final decision, you may, within 30 calendar days of the date on which you received the decision, appeal the decision to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, D.C. 20036. You may also deliver the appeal in person to the: EEOC, Office of Federal Operations at 1801 L Street, N.W., Washington, D.C., or by fax at 202-663-7022. You must also send a copy of the appeal to the Director, OCR, Department of the Interior, 1849 C Street, N.W., MS-5221, Washington, D.C. 20240.

### **Civil Actions**

You may file a civil action in an appropriate U.S. District Court (a) 180 calendar days after the filing of a formal EEO complaint; (b) 90 calendar days after the final agency decision; (c) 90 calendar days after an EEOC decision; or (d) 180 calendar days after an appeal to the EEOC, if no decision has been issued.

Under the Age Discrimination in Employment Act, you may file a civil action in an U.S. District Court 30 days after you have notified the EEOC of the intent to sue.

Also, under the Equal Pay Act, you may file a civil action in a court of competent jurisdiction within two years, or if the violation is willful, within three years of the date of the alleged violation.

In a mixed-case appealed to the Merit Systems Protection Board (MSPB), there are similar rights to file a civil action. Time frames for filing a civil action in a mixed-case will be provided to you in correspondence regarding your mixed-case.

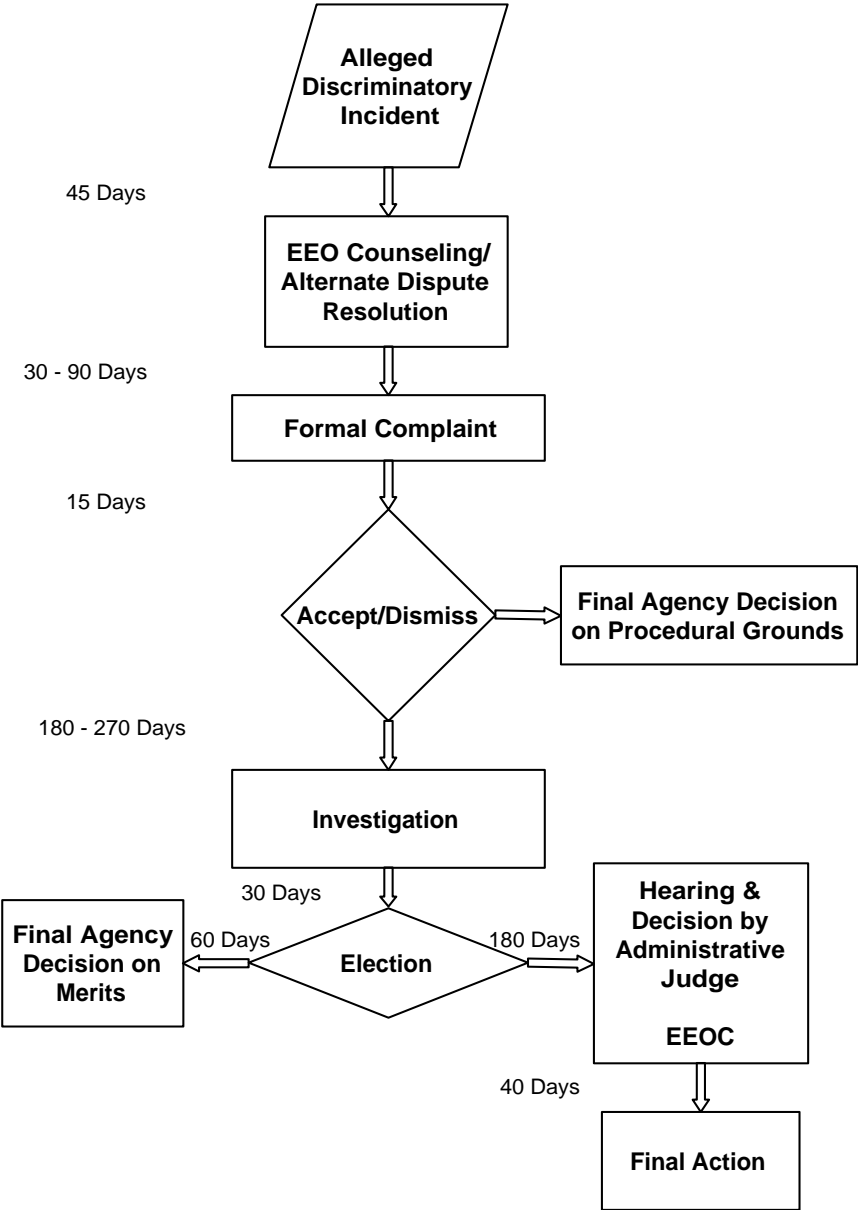
## **The Available Remedies**

When there is a finding of discrimination or reprisal, you will be provided with full relief. Full relief, in appropriate circumstances may include:

- \$ Notification to all employees of the agency in the affected facility of their right to be free of unlawful discrimination and assurance that the particular types of discrimination found will not recur;
- \$ Commitment that corrective, curative or preventive action will be taken, or measures adopted, to ensure that violations of the law similar to those found will not recur;
- \$ An unconditional offer to each identified victim of discrimination of placement in the position the person would have occupied but for the discrimination suffered by that person, or a substantially equivalent position;
- \$ Payment to each identified victim of discrimination on a make whole basis for any loss of earnings the person may have suffered as a result of the discrimination;
- \$ Commitment that the agency shall cease from engaging in the specific unlawful employment practice found in the case.

Generally, relief to victims of discrimination may include nondiscriminatory placement with back pay, cancellation of an unwarranted personnel action, expunction of records on adverse materials, full opportunity to participate in the benefit denied, attorney's fees or costs, and compensatory damages. The type of corrective action awarded to the individual is in direct relation to the discrimination suffered. Attorney's fees and compensatory damages are not awarded in age discrimination complaint.

**Processing Chart for Complaints of Discrimination Based on Race, Color, Sex, Religion, National Origin, Age and Disability or Reprisal**



## **THE U.S. OFFICE OF SPECIAL COUNSEL**

The U.S. Office of Special Counsel's (OSC) primary mission is to safeguard the merit system by protecting federal employees, former employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing, and promoting compliance by government employees with legal restrictions on political activity; and to facilitate disclosures of wrongdoing in the federal government.

### **WHISTLEBLOWER DISCLOSURES**

The OSC serves as a secure channel which Federal employees, former employees and applicants can use to disclose information they reasonably believe evidences a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. Disclosures to the OSC should be made without fear of reprisal. The identity of a person providing information cannot be revealed without their consent.

If the OSC determines that there is a substantial likelihood that the information disclosed evidences the kind of wrongdoing described above, the OSC is required to transmit the information to the Secretary DOI for investigation. By law, the OSC then sends the agency report, with OSC comments, to the President and the congressional committees having jurisdiction over the agency. If the OSC determines there is not a substantial likelihood that the information provided discloses the type of wrongdoing described above, but the information nonetheless merits attention, the OSC, with the consent of the whistleblower, may require the agency to review the matter and inform the OSC of what action has been or is being taken.

### **FILING A WHISTLEBLOWER COMPLAINT**

Whistleblower disclosures to the OSC must be made in writing to:

Disclosure Unit  
U.S. Office of Special Counsel  
1730 M Street, NW Suite 300  
Washington, DC 20036-4505

Tel: (800) 572-2249  
(202) 653-9125  
Fax: (202) 653-5151

### **Access to the Report of Findings**

By law, employees or applicants may review and comment on agency reports resulting from information disclosed by them to the OSC. Your comments, together with any comments or recommendations by the OSC are sent to the President and appropriate congressional oversight committees. The agency report is also made available to the public, as required by law.



## **Role of the Office of the Inspector General**

Part of the Office of Inspector General's (OIG) core mission is to investigate wrongdoing exposed by DOI employees. The OIG Whistleblower Protection Program was established to ensure that employees who disclose allegations of serious wrongdoing or gross mismanagement are free from fear of reprisal for their disclosure.

If the OIG, through efforts of the Associate Inspector General for Whistleblower Protection, discerns that an employee who provided information to DOI management or the OIG is vulnerable to reprisal, the Inspector General may respond in one of several ways.

- < Conduct an informal or formal inquiry to determine if reprisal is taking place.
- < If reprisal is occurring or threatened, advise the appropriate Assistant Secretary or Bureau Director to intervene.
- < If the reprisal continues, assist the employee in seeking relief through the OSC or other appropriate authority.

## **Filing a Complaint of Reprisal with the OIG**

If you believe you are being retaliated against for having disclosed alleged wrongdoing or mismanagement, you may file a complaint with the Associate Inspector General for Whistleblower Protection at (202) 208-4600.

You should be prepared to provide the following information:

- 1) Your name, home address or e-mail address, and telephone number. As a practical matter, protection cannot be extended to any employee who chooses to remain anonymous.
- 2) The specific facts that constitute the serious wrongdoing or gross mismanagement that you disclosed.
- 3) The name of the person(s) who have retaliated or have threatened to retaliate against you.
- 4) Any other information that would assist the OIG in assessing your complaint of reprisal. The OIG is authorized to investigate allegations that relate to the programs and operations of the DOI. The OIG does not have authority to investigate EEO matters.

**For more information, please contact the Departmental Office of Civil Rights, the Office of the Solicitor, or the Office of the Inspector General.**



**UNITED STATES  
DEPARTMENT OF THE INTERIOR**

**RIGHTS AND PROTECTIONS UNDER  
THE FEDERAL EEO LAWS  
AND THE  
WHISTLEBLOWER PROTECTION ACT**

**OFFICE OF CIVIL RIGHTS  
1849 C Street N.W. – MS 5214  
Washington, D.C. 20240-0001  
(202) 208-5693  
Fax: (202) 208-6112  
TDD: (202) 208-5998**

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